

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
Petition for FCC Agreement in)	DA 05-2289
Redefining Rural Telephone)	
Company Service Areas in the)	
State of South Dakota Pursuant)	
To 47 C.F.R. Section 54.207(c))	

**REPLY COMMENTS OF RCC MINNESOTA, INC.
AND WIRELESS ALLIANCE, L.L.C.**

RCC Minnesota, Inc. and Wireless Alliance, L.L.C. (“RCC/WALLC”) hereby replies to comments submitted by the South Dakota Telecommunications Association (“SDTA”) regarding the petition of the South Dakota Public Service Commission (“SDPUC”) for FCC concurrence in redefining the service areas of several South Dakota incumbent local exchange carriers (“ILECs”) pursuant to Section 54.207(c) of the FCC’s rules (“Petition”). As set forth below, SDTA’s comments improperly attempt to relitigate ETC designation issues put to rest in the state proceeding, and its arguments against redefinition are without merit.

I. DISCUSSION

A. Speculation About Existing ETCs Relinquishing ETC Status Is a State Matter With No Relevance to the Redefinition Process

SDTA attempts to block redefinition by raising the specter of relinquishment of ETC status, a matter that lies solely within the SDPUC’s jurisdiction and is

irrelevant to service area redefinition. Specifically, while SDTA concedes that the requested redefinition “may increase competitive options for some of the consumers in the ILECs’ study areas,”¹ SDTA argues that redefining an ILEC’s service area as something smaller than its study area creates the possibility that existing ETCs may withdraw as ETCs in portions of a study area, leaving consumers in other areas with fewer competitive options. Moreover, SDPUC argues that the Petition is “unclear” about the treatment of wire centers beyond RCC/WALLC’s ETC service area and whether existing ETCs can relinquish their ETC status in those areas.²

Put simply, speculating whether a carrier may relinquish ETC status is not a consideration in determining whether to redefine a service area for ETC purposes. Under Section 214(e)(4) of the Act, “[a] State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier.” Because South Dakota has not ceded jurisdiction over RCC/WALLC’s ETC designation, the SDPUC is clearly vested with exclusive jurisdiction over carriers relinquishing their ETC status. Even if the scenarios raised by SDTA were to come about, the FCC would play no part in the relinquishment process. Whether a carrier may relinquish its ETC status is not among the recommendations of the Joint Board that the FCC is required to consider here, and SDTA points to no FCC rule or order that adds

¹ SDTA Comments at p. 4.

² *Id.*

relinquishment concerns to the redefinition process. The SDPUC addressed SDTA's relinquishment concerns in the designation order, and any future concerns in that regard are solely within the statutory ambit of the SDPUC. In short, the idea of relinquishment is a red herring interposed by SDTA to create the appearance of controversy where none exists.

Moreover, there is nothing unclear about what the SDPUC requested, in particular with respect to areas outside RCC/WALLC's ETC service area. The Petition was very clear in proposing, for each affected ILEC, an ETC service area consisting of the wire centers within RCC/WALLC's ETC service area, with the remainder of the wire centers comprising another service area.³

B. The Petition Demonstrates That There Is No Significant Risk of Cream-Skimming.

Based on an extensive record compiled in the state designation proceeding, and using the framework established by the FCC in *Virginia Cellular*⁴ and *Highland Cellular*,⁵ and the recent *2005 Report and Order*, the SDPUC's Petition makes it clear that the proposed redefinition does not present a significant cream-skimming risk. Three of the affected rural ILECs have elected to disaggregate high-cost support down below the study-area level so that costs are more accurately targeted to relatively high- and low-cost portions of their study areas. Thus, it matters not where RCC/WALLC is designated within those carriers' study areas: if

³ See Petition at p. 5.

⁴ See *Virginia Cellular, LLC*, 19 FCC Rcd 1563 (2004) ("*Virginia Cellular*").

it serves only the lower-cost wire centers, it will not receive high levels of support; if it serves only the higher-cost wire centers, it will be compensated appropriately. With respect to those ILECs that did not disaggregate support, the Petition employed the population density analysis utilized by the FCC and conclusively demonstrated that RCC/WALLC is not proposing to serve primarily the higher-density, lower-cost portions of the affected ILECs' service areas.⁶

SDTA's cream-skimming allegations scarcely deserve attention because they rely on the highly suspect proposition that cream-skimming can occur *entirely in the absence of low-cost, high-density areas*. It strains credulity to refer to Ventura's Sisseton wire center with 7.2 persons per square mile as a "high-density" area as SDTA does.⁷ Moreover, as SDTA concedes, the Sisseton wire center is allocated less support under Ventura's disaggregation plan, meaning that the alleged cream-skimming would occur in wire centers with population densities of 3.5, 3.1, and 3.0 persons per square mile, respectively. It is not reasonable for SDTA to ask the FCC to suspend its disbelief to this extent.

In sum, SDTA has failed to challenge the analysis set forth in the Petition demonstrating that there is no significant risk of cream-skimming. For this reason alone, the FCC should grant the Petition without further action.

II. CONCLUSION

⁵ See *Highland Cellular, Inc.*, 19 FCC Rcd 6422 (2004) ("*Highland Cellular*").

⁶ See Petition at pp. 8-9.

⁷ See SDTA Comments at p. 7.

The redefinition proposed by the SDPUC is clearly articulated, well-grounded in the state designation order and the FCC's policies, and the FCC is well within its authority to grant its prompt concurrence. SDTA has failed to raise a credible challenge to the cream-skimming analysis or any other element of the Petition, instead raising a host of red herrings that are wholly inappropriate in the context of applying the FCC's redefinition standards to a very straightforward Petition. Accordingly, RCC/WALLC requests that the Commission dismiss SDTA's objections and grant its concurrence by allowing the proposed redefinition to take effect without further action.

Respectfully submitted,



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